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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/832,718 | 04/11/2001 | Daniel L. McConnell | 069035.00001 | 9752 |

29391 7590 11/26/2004

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 11/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/832,718

Applicant(s)

MCCONNELL ET AL.

Examiner

Corbett B. Coburn

Art Unit

3714

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 02 September 2004 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☐ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☒ the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☐ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

See attached



**DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700**

DETAILED ACTION

1. In the Office Action of 24 August 2004, Appellant was informed that the grouping of the claims was incorrect. Appellant's submission of 2 September 2004 addresses the first issue identified, but fails to address the second issue.

2. As in the first Appeal Brief, Appellant states that claims 9-11 & 33 are separately patentable. Yet Appellant fails to provide reasons that they are separately patentable. Appellant does detail the additional limitations contained in these claims. However, 37 CFR 1.192 clearly states, "Merely pointing out differences in what the claims cover is not an argument as to why the claims are separately patentable."

3. In the 24 August 2004 Office Action, Appellant was told that both issues must be addressed to avoid dismissal of the appeal. 37 CFR 1.192(c) makes it very clear that if the Appellant submits an Amended Appeal Brief that does not cure each of the problems pointed out in the Notice of Non-Compliance, the Appeal is dismissed as a matter of law. Examiner has no choice in this matter.

4. Therefore, the Appeal is dismissed.

5. Should Appellant decide to petition the Office to revive the appeal, Appellant must submit a correct Appeal Brief. Examiner suggests that Appellant consider allowing claims 9-11 & 33 to stand or fall with claim 33 since claim 33 combines the essential elements of claims 9 and 10.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Corbett B. Coburn whose telephone number is (571) 272-4447.

The examiner can normally be reached on 8-5:30, Monday-Friday, alternate Fridays off.


Art Unit: 3714

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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